D.B. CIVIL WRIT PETITION NO.1814/2006
UOI & Ors. **Vs**. Chiranjilal Chanda & Anr.

Date : 17.08.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Kuldeep Mathur for the petitioner.
Mr. Amra Ram Rajpurohit for the respondents.

Heard learned counsel for the parties.

This petition is directed against the order of the Central Administrative Tribunal, Jodhpur Bench, Jodhpur. The termination of the respondent Chiranji Lal Chanda has been found to be invalid by the Central Administrative Tribunal while holding that he was a part time employee. The Tribunal has ordered to reinstate the workman on the job on which he was last employed and directed that workman shall be entitled to all consequential benefits except the back wages and other reliefs were declined.

This matter has travelled to this Court a second time. In the first instance, the Tribunal had

dismissed the original application filed by the respondents inter alia on the ground that he is not entitled to regularisation because he has not been able to establish on the status as a temporary employee.

As a matter of fact, the respondent-workman has moved the Tribunal inter alia on the ground that he was appointed as a contingent Farrash on 1.1.1996 on the monthly wages of Rs.300/- which was increased to Rs.500/- per month from 18th January, 1997. By an order order dated 10.1.2000, the respondent-workman's services had been brought to an end. Primarily, it was that order which was subject matter of Original Application No.275/2000 before the Tribunal out of which the present writ petition has arisen. The workman sought two fold reliefs. Firstly, that his services have been terminated illegally therefore, he may be reinstated and secondly, claiming his status to be temporary employee has prayed for regularisation of his services. His Original Application was rejected and it became subject matter of D.B. Civil Writ Petition No.266/2004.

On the factual matrix, the Court noticed that

factum of appointment of the petitioner on 1.1.1996 and his termination vide oral order dated 10.1.2000 is not in dispute. On this undisputed premise, this Court found that the Tribunal had without considering the objections to the validity of the termination of the petitioner's service came to consider the claim for regularisation under the Government of India Scheme, 1993 and without even examining whether the petitioner has been appointed and worked as a whole time or part time worker, the Original Application was dismissed merely by referring to the Supreme Court decision in B.S. Chendalyia Vs. Union of India and others reported in (1998) 37 ATC page 469, that part time workers were not entitled for grant of temporary status and regularisation.

The Court finding that the Tribunal has not addressed itself to the principal question and without finding basic facts have hasten to act in pursuance of observation flowing from the Supreme Court judgment referred to above.

In these circumstances, the said writ petition was allowed and the order of the Tribunal dated 22nd Oct., 2001 was set aside and the Tribunal was directed to decide the original application afresh by considering the rival contentions including objections to the termination of the services after four years continuous service. It is only, if the termination is found to be invalid that the question of grant of the status of regularisation will become germane for consideration. The question as to validity of termination order needs a detail enquiry into the fairness of terminating the services, the nature of the duties discharged by the petitioner in order to find out whether he was engaged for discharging duties as part time or was a whole time employee and whether he was engaged in connection with sovereign functions of the State or otherwise, and if he was not engaged under the Sovereign function of the State, whether he is entitled to any benefit of the provisions of the Industrial Disputes Act. Thus, broadly referring to the contours of the enquiry to be held in such matters, the Tribunal was directed to consider the validity of oral termination after four years of the

continuous service.

When the matter was again considered by the Tribunal in pursuance of the aforesaid order, the Tribunal found that as the original applicant has admitted himself to be a part time employee and finding that there is no provision for oral termination of service, the termination order was found to be invalid. The only relief that has been granted to the original applicant vide impugned order is that he is to be reinstated on the job on which he was last employed with no back wages though he was entitled to other consequential benefits. It was an undisputed position that the present petitioners have terminated the services of respondent No.1. This being the admitted position at the earlier stage of the litigation, the petitioners cannot now be permitted to take a different stand particularly when the allegation is about oral termination.

In that view of the matter, the basic premise of the petitioners that it was not a case of termination,

cannot be sustained.

So far as the question of termination order being valid there being no provision for oral termination, apparently, it must be held that no termination order came into existence by which the services of the respondent had come to an end.

In that view of the matter, the finding of the Tribunal that the services of the respondent No.1 has not been invalidly terminated does not call for interference. Since the relief has been granted by denying any emoluments for the period the respondent No.1 has not discharged his functions and claim for regularisation has also not been entertained, we do not find any ground for interference at the behest of the petitioners.

The petition fails and is hereby dismissed. Interim order passed by this Court is vacated.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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